

**Editor's note:**

**erratum already corrected in text p. 247**

AMOCO PRODUCTION CO. ET AL.

IBLA 82-687

Decided March 21, 1983

Appeal from Alaska State Office, Bureau of Land Management, decision rejecting the high bid for tract 48 in competitive oil and gas lease sale No. 821. AA 46622.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases:  
Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases:  
Discretion to Lease

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate, and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, and the record fails to disclose a sufficient factual basis for the conclusion of inadequacy, the decision rejecting the bid will be set aside and the case remanded to BLM for reconsideration of the bid.

APPEARANCES: W. R. Francis and David Neely, Denver, Colorado, for Amoco Production Company; David E. Kinnan, Esq., Houston, Texas, for Shell Oil Company; Herbert S. Harris, Los Angeles, California, for Union Oil Company

of California; C. W. Butler and Glenn M. Fedderson, El Dorado, Arkansas, for Murphy Oil Corporation.

# OPINION BY ADMINISTRATIVE JUDGE HARRIS

Amoco Production Company, Shell Oil Company, Union Oil Company of California, and Murphy Oil Corporation have appealed the decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 4, 1982, rejecting their high bid of \$53 per acre for tract 48 in competitive oil and gas sale No. 821 held on January 27, 1982, for lands in the National Petroleum Reserve. BLM found the bid to be inadequate.

The March 4, 1982, BLM decision provided:

At Competitive Oil and Gas Lease Sale No. 821 held on January 27, 1982, you were declared the high bidder for the following Tract:

<u>Tract No.</u>	<u>Land Description</u>	<u>Amount of Bid Deposit</u>
48	Umiat Meridian, Alaska T. 9 S., R. 23 W., All.	\$240,970.00

The Deputy Manager, Onshore Resource Evaluation, Alaska Region, Minerals Management Service (MMS), Anchorage, Alaska, recommended rejection of your bid because of inadequacy based on their evaluations. MMS concluded that your bid does not represent fair market value. The Bureau of Land Management (BLM), cross validated the MMS recommendation in several ways before concurring in the decision to reject.

First, BLM compared the aggregate results of the first NPR-A sale to the aggregate results of the first Prudhoe Bay sale to determine whether the average value received by the Federal government was appropriate for a sale in a frontier area where oil had yet to be discovered. The first Prudhoe Bay sale, held in 1965 before oil was discovered there, netted the State of Alaska an average of \$48.00 (in 1982 dollars). The first NPR-A sale, held in 1982 before private industry had an opportunity to find oil there, netted the Federal government an average of \$87.45 (in 1982 dollars). Thus, the NPR-A first sale results are about what one would expect for an unexplored area. As BLM was satisfied that the government was being fairly compensated at the aggregate level, the remaining question was whether the tract-by-tract evaluation and bid acceptance process was assuring the receipt, by the Federal government, of a fair payment for each tract. BLM was satisfied that the government was being fairly compensated for the entire sale. The remaining question was whether some tracts had attracted anomalously low bids. The BLM cross validated the MMS tract-by-tract evaluation and bid acceptance recommendation by using the pattern of industry bidding to determine which

industry bids did not fit the general pattern of the market. This "goodness of fit" approach provides the decision maker with information on whether the high bid for any given tract fits the general pattern of industry bidding.

On the basis of this goodness of fit test the BLM identified tracts which did not appear to fit the general pattern of industry bidding and which were judged by BLM to be anomalously low bids. The four tracts which MMS recommended that BLM reject the high bids matched the anomalously low bid tracts which BLM had identified. The BLM was, therefore, satisfied that MMS had done an evaluation which guaranteed the government receipt of fair market value for the entire sale and had correctly identified tracts which should have the high bid rejected. The BLM thus concurred with MMS and decided to reject the high bids on tracts 14, 33, 34, and 48. <sup>1/</sup>

In a memorandum, dated March 4, 1982, from the Director of the Alaska State Office, BLM, to the Director, BLM, concerning the adequacy of bids for NPR-A sale 821, it was stated:

Our analysis of the adequacy of bids received for NPR-A Sale 821 indicates that the high bids on four of the tracts were insufficient. We recommend rejection of the high bids on tracts 14, 33, 34 and 48 as the high bids on these tracts fall below the Current Expected Value (MROV), the Delayed Expected Value (DRV) and the Average Tract Value (AEOT). The Minerals Management Service concurs with this recommendation. The relationship between the amount of the high bids and the MROV, DRV and AEOT values is shown below.

<u>Tract</u>	<u>High Bid</u>	<u>%MROV</u>	<u>%DRV</u>	<u>%AEOT</u>
48	\$1,204,850.00	19.19	34.40	54.57

The Authorized Officer recommended that the high bids be accepted on all the remaining tracts where MMS concluded the high

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<sup>1/</sup> Fifty-nine tracts were offered at the January sale. Bids were received on only 29 tracts. Twenty-five bids were accepted; four rejected. In the announcement of sale BLM established a minimum bid value of \$25 per acre. The per acre values of the rejected bids were \$25.10, \$35.09, \$36.20, and \$53 for tracts 14, 33, 34, and 48, respectively.

bids did, in fact, constitute the return of fair market value for the grant of leases (IBLA 76-62). My approval of the Authorized Officer's recommendations constitutes the final Bureau action in this matter. [2/]

An undated memorandum from MMS to the State Director, BLM, regarding recommendations on high bids received, stated that MMS, Alaska Region, reviewed the high bids and geological and economic parameters and assumptions used in the derivation of resource economic values for each of the tracts receiving bids in the sale No. 821, and that MMS recommended acceptance of 25 of the high bids received and rejection of 4 of the high bids received. The subject tract was recommended for rejection.

Under "Factors Considered" the memorandum provided as follows:

MMS, Alaska Region, recommendations for acceptance or rejection of bids received in NPR-A are based on presale and postsale tract valuations. However, we do not feel that rigid adherence to a single criterion is in accordance with the stated objectives of leasing within NPR-A, one of which is the encouragement of timely exploration and development. Therefore, we have considered a number of other factors in assessing the adequacy of bids. These factors include the following:

1. Geological and economic uncertainty, which are the primary components of risk analysis, have a very large effect on calculated resource economic value. We have demonstrated the effect of very small changes in geologic risk to your staff during one of our presale meetings. Almost all of the tracts offered in Sale No. 821 are burdened with a moderately high to extremely high degree of uncertainty. Small variations in subjective judgments of geologic data reliability by equally qualified analysts have tremendous effects on the values of high risk tracts.

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2/ Accompanying that memorandum is a copy of a chart styled "High Bid and CEV/DEV Matrix." DEV stands for "delayed expected value." CEV, or current expected value, is calculated for the bid acceptance decision by MMS. Note 1 of the chart states in part:

"MMS defines CEV as 'not (being) the market value of the oil and gas eventually discovered or produced, but the value of the right to explore, and, if there is a discovery, develop and produce' the lease. In a very real sense a firm which acquires a lease is in the same position as an individual who buys a sweepstakes ticket. There is only a very small chance at a big payoff, while there is a large chance that the ticket (or lease) is in fact going to represent a net cash drain."

The chart listed the high bid for tract 48 as \$1,204,850. Both the CEV and DEV for tract 48 were withheld. Note 2 of the chart explained "[v]alue withheld to avoid prejudicing the government's position at possible reoffering sales."

2. It is in the best interest of the Government, as well as the bidder, to acquire additional subsurface geological and geophysical information, particularly in the relatively unexplored western and southern parts of the NPR-A. In this light, the loss of revenue to the Government in accepting serious bids which fall short of the Government's estimate of value should be considered relative to the immense cost of the Government's own exploration program in recent years.

3. Substantial bids, even though they fall short of our calculated values for certain tracts, are considered as evidence of a serious commitment on the part of the bidders to actively pursue exploration of these tracts within the primary term of the lease.

4. Additional components of uncertainty, not considered in the MMS evaluation, are the lack of provisions for lease extensions due to shut-in production and/or unitization. This lack of assurance of lease extensions beyond the primary term undoubtedly has affected the bidder's estimates of present worth of tracts, particularly those in the more remote parts of NPR-A.

The undated memorandum recommended rejection of four bids of which that for tract 48 was one because "they fall below the MMS calculated MROV and because most of the bid values suggest only speculative interest in these tracts."

In the statement of reasons for appeal appellants argue that the methods used to decide which bids to reject are arbitrary and capricious, and that the rejection of the bid at issue is not supported by a reasonable factual explanation.

In the statement of reasons appellants reference the undated MMS memorandum sent to BLM, specifically the section of that memorandum titled "Rationale for Recommendations," and state:

In NPR-A Sale No. 821 held January 27, 1982, high bids were recommended by the Minerals Management Service and ultimately accepted by the Bureau of Land Management on tracts in which the bid values exceeded the MMS calculated statistical mean range of values (MROV), which in twelve instances was the minimum of \$25.00 per acre with the Delayed Expected Value not even being calculated, (#1. under Rationale for Recommendations); on tracts which were below the (MROV) but were above the MMS calculated delayed statistical mean range of values (DMROV) (#2. under Rationale for Recommendations); and on tracts which were below both the (MROV) and (DMROV). (#3. under Rationale for Recommendations). Additionally, high bids were rejected on four tracts because ". . . they fall below the MMS calculated DMROV and because most of the bid

values suggest only speculative interest in these tracts: . . ." [emphasis added] (#4. under Rationale for Recommendations). No rational consistency appears to have been used in selecting high bids for acceptance vs. rejection. This becomes even more apparent when a comparison is done between those bids accepted for tracts under category #3., and those rejected under category #4.

Category #3. bids were accepted on the basis of certain "applicable factors", which presumably were not present in the tracts bid on under Category #4: Factor 1 High Risk, Factor 2 Incentive for exploration, Factor 3 Serious Bid, and Factor 4 Lease Extension problem. Initially, Factor 4 applies to all tracts offered, in that none of the leases issued will provide for lease extensions as a result of shut-in production and/or unitization. Likewise, Factor 2 applies universally to all tracts. Under Factor 1, the MMS concedes that ". . . Almost all of the tracts offered in Sale No 821 are burdened with a moderately high to extremely high degree of uncertainty." Moreover, the MMS recognizes the void of any consistency by stating, "Small variations in subjective judgments of geologic data reliability by equally qualified analysts have tremendous effects on the values of high risk tracts." Thus, the only factor that could possibly distinguish the Category #3 bids from the Category #4 bids is Factor 3 Serious Bid. The subjectiveness and inconsistent application of this criterion is dealt with below, and as it applies to the tract at issue, under Point 2 of this Statement of Reasons. Statement of Reasons at 2.

Appellants provide a comparison of the tracts for which bids were rejected with adjoining tracts and note that the high bid on tract 33 was \$35.09 per acre and was rejected; yet the high bid of \$26.58 per acre was accepted on adjoining tract 32; further, the successful high bidder on tract 32 submitted a high bid of \$36.20 per acre on tract 34, which bid was rejected. Appellants further note that the successful high bidder on tract 31, which adjoins both tracts 33 and 32, submitted a bid of only \$25.05 per acre on tract 33, and did not even submit a bid on tract 32; and that the high bid of \$25.10 per acre for tract 14 was rejected even though no adjoining tract received a bid. Appellants conclude that the rejection of the bid for tract 14 was not based on the pattern of industry bidding (goodness of fit test), otherwise, any bid above the minimum should have been accepted; and that, based on the comparisons provided, BLM's decision to reject the high bids noted was based on a subjective opinion of what was not an "adequate bid," thereby making the decision arbitrary and capricious.

Citing Southern Union Exploration Co., 51 IBLA 89 (1980), which held that BLM must ensure that a reasonable explanation is provided when BLM relies on MMS' analysis in rejecting a bid as inadequate, appellants contend that they are entitled to know what value MMS and BLM placed on tract 48. Further, appellants note that their bid of \$53 per acre for that tract was

the high bid over two other bids of \$27.01 and \$32.25 per acre. Appellants point out that bids were accepted by BLM for several tracts where only one bid was made. Appellants contend that their bid was clearly a serious bid.

Finally, appellants provide a comparison of the tract at issue with adjoining tracts. They note that the successful high bid on tract 53, which adjoins tract 48, was \$97.60 per acre, but that the same bidder submitted a bid of only \$32.25 per acre on tract 48. They state the successful bidder on tracts 45 and 49 (\$71.21 and \$63.63 per acre respectively), which also adjoin tract 48, submitted no bid on tract 48, and tracts 43, 44, and 47 which also adjoin tract 48 received no bids. Appellants contend that this comparison shows a lack of objectivity on BLM's part in rejecting their bid and that under the "goodness of fit" standard, their bid should have been accepted.

[1] The Secretary of the Interior has the discretionary authority to reject as inadequate a high bid in a competitive oil and gas lease sale in the National Petroleum Reserve--Alaska. 42 U.S.C. § 6508 (Supp. V 1981); 43 CFR 3132.5(b). This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Snyder Oil Co., 69 IBLA 259, 260 (1982), and cases cited therein. Departmental policy in the administration of its competitive lease program is to seek the return of fair market value for the grant of leases, and the Secretary reserves the right to reject a bid which will not provide a fair return. M. Robert Paglee, 68 IBLA 231, 233 (1982), and cases cited therein.

MMS was the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on MMS' reasoned analysis. L. B. Blake, 67 IBLA 103 (1982). When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. M. Robert Paglee, *supra* at 234, and cases cited therein. The Board has stated the rationale for this as follows:

[T]he appellant is entitled to a reasoned and factual explanation for the rejection of its bid. Appellant must be given some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board. The explanation provided must be a part of the public record and must be adequate so that this Board can determine its correctness if disputed on appeal. Steven and Mary J. Lutz, 39 IBLA 386 (1979); Basil W. Reagel, 34 IBLA 29 (1978); Yates Petroleum Corp., 32 IBLA 196

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3/ On Dec. 3, 1982, the Secretary of the Interior issued Secretarial Order No. 3087 transferring all onshore minerals management functions of the MMS, not relating to royalty management, to BLM. Notice of the transfer of functions was published in the Federal Register on Mar. 2, 1983. 48 FR 8982.



(1977); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975).

Southern Union Exploration Co., 51 IBLA 89, 92 (1980).

[2] Based on the present record we are unable to determine the correctness of BLM's decision rejecting appellants' high bid. Clearly, appellants' bid is a serious bid and is not spurious or irresponsible. In fact, their bid was more than twice as much as the minimum bid (\$25 per acre) established for the sale. Appellants' arguments concerning the MMS "Rationale for Recommendation" point out serious deficiencies in that analysis. Although bids for certain tracts were accepted under category 3 of the undated MMS memorandum because they meet three of the four factors outlined in that memoranda, there was no attempt to set forth the factors for which the bid on tract 48 was deficient. In the absence of that information, appellants' analysis of those factors as they relate to tract 48 is persuasive, and it appears that those factors were not applied consistently by MMS.

In addition, appellants' comparison of bids raises considerable doubt whether their bid was inadequate. Of the six tracts adjoining tract 48, no bids were received for the three tracts immediately north and east of tract 48. Tract 45, adjoining the southeast corner of tract 48, received two bids with \$71.21 per acre being the high bid. Tract 49, directly south of tract 48 received three bids with \$63.63 per acre being high. Also, BLM accepted the highest of three bids, \$97.60, for tract 53 adjoining tract 48's western boundary. It would appear that under the "goodness of fit" approach applied by BLM, appellants' bid fit the general pattern of the market. Other than BLM's summary conclusion that appellants' bid "did not appear to fit" such a pattern, there is no explanation of how BLM applied its test.

In addition, the decision is deficient in that it failed to advise appellants the presale evaluation of tract 48 or the estimated fair market value and the factual data on which it was based. Thus, where an appellant has submitted a high bid which is not clearly spurious and BLM has failed to provide the estimated minimum value for the tract in question, the appellant may assert its right to such information, and unless there is a legal prohibition, BLM must provide that valuation and the factual data on which it was based. Southern Union Exploration Co., *supra* at 95; *see Snyder Oil Co.*, *supra* at 261.

This does not mean the Board will substitute its own judgment for that of the Department's experts in determining what is fair market value for the tract, but rather that the Board will require sufficient facts and a sufficiently comprehensible analysis to insure that a rational basis for the determination is present. Accordingly, we remand this case to BLM for readjudication of appellants' bid. In readjudicating the bid BLM should consider the arguments presented by appellants in this appeal. If the bid is rejected again, BLM shall set forth the reasons for doing so completely, including the presale evaluation, so they may be addressed by appellants and considered by the Board in event of an appeal. Snyder Oil Co., *supra* at 261.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Alaska State Office is set aside and the case remanded for further action consistent with this opinion.

Bruce R. Harris  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

